

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services)	CG Docket No. 03-
123		
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	
)	
Petition for Clarification on Spanish VRS by)	
Communication Service for the Deaf)	
_____)	

PETITION FOR CLARIFICATION ON SPANISH VRS

I. Introduction

Communication Service for the Deaf (CSD) hereby respectfully requests the Federal Communications Commission (FCC or Commission) to clarify that as a non-mandated service, the provision of ASL-to-Spanish non-shared language translation video relay service (VRS) is not required twenty-four hours per day, seven days per week. CSD makes this request because FCC rules do not require non-mandated relay services to be provided on a 24/7 basis, and because any rule to the contrary would defeat the purposes of Title IV of the Americans with Disabilities Act (ADA).

II. As a Non-Mandated Service, ASL-to-Spanish VRS is Not Required on a 24/7 Basis

In 2004, the FCC ruled that non-shared TRS was a value-added translation service that was not eligible for compensation from the interstate TRS fund.¹ CSD was among three petitioners that appealed this ruling, in a petition for reconsideration that requested the Commission to “*authorize* compensation from the Interstate TRS Fund for video relay conversations between ASL users and individuals who speak Spanish.”² The other two petitioners were the National Video Relay Service Coalition and Hands On VRS. On July 19, 2005, the FCC granted these petitions in an Order on Reconsideration reversing its prior conclusion that translation from ASL into Spanish is not a telecommunications relay service.³ Although, in this order, the FCC held that this service was now a form of TRS that was “*eligible* for compensation from the Interstate TRS Fund,” it made equally clear that its July order would “*not mandate* this service.”⁴ Nor did any provision of the July order explicitly direct VRS providers to offer non-shared ASL-to-Spanish VRS service on a 24/7 basis. Petitioner took the absence of this directive, together with the fact that this service was not mandated, to mean that VRS providers would be

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dkt. Nos. 90-571 & 98-67, CG Dkt. No. 03-123, 19 FCC Rcd 12475 at 12504-05, ¶60-61 (June 30, 2004).

² CSD Petition for Reconsideration (September 30, 2004) at 21 (emphasis added). CSD did not request the Commission to mandate the provision of this service.

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration CC Dkt. No. 98-67, CG Dkt. No. 03-123, FCC 05-139 (July 19, 2005) (Spanish VRS Order).

⁴ Spanish VRS Order at ¶1 (emphasis added). The FCC’s order is replete with other references that reflect the optional nature of this service. See, e.g., ¶17 (“*authorizing* [*i.e.*, not “mandating”] ASL-to-Spanish VRS is particularly critical for deaf Latino children. . .”; ¶21 (“*some* non-English language relay service *should be* [*i.e.*, not “must be”] provided”; ¶31 (“*allowing* compensation from the Interstate TRS Fund for ASL-to-Spanish VRS. . .”

permitted to offer this service during reduced hours. Although a separate order released by the Commission on the same day did direct VRS providers to begin offering VRS everyday, 24 hours a day, that order, too, was silent with respect to the hours that the newly authorized ASL-to-Spanish video relay service would have to be provided.⁵

This is not the first time that the FCC has drawn a distinction between services required around the clock and those that are just authorized for reimbursement. Specifically, in March 2000, the Commission ruled that the cost of VRS calls would be eligible for Interstate reimbursement, but that because it was not mandating VRS, service providers were under no obligation to provide VRS 7 days a week, 24 hours every day.⁶ It was in that order that the Commission even went so far as to amend its rules to provide that “[r]elay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.”⁷

Similarly when, in March 2000, the FCC *authorized* the provision of same language intrastate services, it made clear that this was a voluntary service that *could be offered* by TRS providers as they saw fit. This was in contrast to

⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order*, CC Dkt. No. 98-67, CG Dkt. No. 03-123, FCC 05-140 (July 19, 2005) (24/7 Report and Order). Nor did this Report and Order mandate VRS.

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. 98-67, FCC 00-56, 15 FCC Rcd 5140 (March 6, 2000) (Improved TRS Order) at ¶22.

⁷ 47 C.F.R. §64.604(b)(4). As the FCC is aware, before requiring 24/7 VRS service, many VRS providers did not offer this service around the clock, yet were reimbursed through the Interstate TRS Fund for their minutes.

interstate Spanish relay services, which were mandated, and which had to be provided on a 24/7 basis.⁸ It is important to note that while VRS is considered an interstate service for the purposes of cost reimbursement, this March 2000 ruling never applied to VRS, and as noted above, until the July 2005 order, VRS providers were specifically prohibited from receiving compensation for ASL-to-Spanish VRS.⁹

Also noteworthy is that the FCC's justification for requiring VRS on a 24/7 basis was "the rapid growth in the use of VRS" and the fact that "consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system."¹⁰ This rationale could hardly justify a 24/7 rule for ASL-to-Spanish VRS, because, without compensation from the Interstate TRS fund in the months leading up to this ruling, most VRS providers had all but curtailed this service.

II. A Contrary Ruling Will Defeat the Objectives of the FCC to Facilitate the Provision of VRS between Spanish-Speaking Persons and ASL Users

The FCC based its decision to authorize ASL-to-Spanish VRS on the need to ensure access to the telephone system by "the large and growing Spanish-

⁸ Improved TRS Order at ¶¶29-31. See also Spanish VRS Order at ¶10, wherein the FCC made a point of drawing the distinction between a mandated and an authorized TRS feature: "The Commission added that while it was *mandating* only interstate Spanish relay service, any non-English language relay service provided by an interstate relay provider *would be compensable* from the Interstate TRS Fund." (emphasis added)

⁹ Historically, approximately 80 percent of all telephone traffic occurs at the intrastate level. If the FCC has never required 24/7 Spanish text-based TRS at the intrastate level, it would be surprising if the new ASL-to-Spanish VRS were to require 24/7 service – since 80 percent of these calls likely take place at the intrastate level.

¹⁰ 24/7 Report and Order at ¶29.

speaking population in this country.”¹¹ However, the FCC’s goal of meeting the telecommunications needs of this population will not be achieved if this service is required on a 24/7 basis. The reason for this is that the volume of these calls is so low that if required on a 24/7 basis, few, if any providers would likely be capable of offering ASL-to-Spanish VRS.¹² The FCC has acknowledged that ASL-to-Spanish VRS is not likely to constitute more than one to two percent of all VRS calls.¹³ Since beginning to offer the service, CSD has confirmed the accuracy of this figure. Unfortunately, because call volume is so low and generally tapers off at off-peak periods, CSD and other providers would be hard pressed to continue supporting this service if forced to do so around the clock. This would defeat the universal service goal of the ADA, as interpreted by the FCC, to have this service bring “persons with hearing and speech disabilities into the ‘telecommunications mainstream’ and facilitate[] their educational and employment opportunities.”¹⁴

¹¹ Spanish VRS Order at ¶22.

¹² This is because minimal usage during the middle of the night would prevent providers from being adequately compensated for the costs associated with making ASL-Spanish interpreters available at all hours of the night.

¹³ Spanish VRS Order at ¶31.

¹⁴ Spanish VRS Order at ¶20.

IV. Conclusion

For the reasons stated above, CSD requests clarification that ASL-to-Spanish non-shared language translation video relay service (VRS), a non-mandated relay service, is not required twenty-four hours per day, seven days per week.

Respectfully submitted,

/s/

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